



**THE DEFERRED COMPENSATION COUNCIL
MEETING MINUTES OF
SEPTEMBER 25, 2015**

A meeting of the Deferred Compensation Council (the "Council") was held
On September 25, 2015 at 1:00 PM in the Conference Room of the Office of the State Treasurer Located at 820
Silver Lake Blvd., Suite 100, Dover, Delaware.

All Board Members Represented or in Attendance:

The Honorable Ken Simpler, State Treasurer
The Honorable Karen Stewart, Insurance Commissioner
Ms. Valerie M. Watson (on behalf of Secretary Thomas J. Cook, Department of Finance)
Mr. Robert Scoglietti (on behalf of Director Ann Visalli, Office of Management & Budget)
Mr. Charles Campbell-King, State Employee Member At-Large
Mr. Ralph Cetrulo, Public Member At-Large

Others in Attendance:

Ms. Ann Marie Johnson, Deputy Attorney General
Ms. Jennifer Vaughn, Department of Insurance
Ms. Nora Gonzalez, Deputy State Treasurer, Office of the State Treasurer
Mr. Steve McVay, Director of Finance & Investment Services, Office of the State Treasurer
Mr. Dan Kimmel, Financial Investment Program Specialist, Office of the State Treasurer
Ms. Colleen Denham, Administrative Specialist II, Office of the State Treasurer
Ms. Martha Sturtevant, Executive Assistant to the State Treasurer
Mr. Michael Sanders, Principal, Cammack Retirement Group
Ms. Emily Wrightson, Managing Consultant, Cammack Retirement Group
Mr. Jeffrey Snyder, Vice President, Cammack Retirement Group

CALLED TO ORDER

Mr. Simpler called the meeting to order at 1:00 PM

APPROVAL OF MINUTES

The Board Members reviewed the Public Minutes of the July 22, 2015 meeting.

A MOTION was made by Mr. Scoglietti and seconded by Ms. Watson to approve the minutes from the July 22 meeting.

MOTION ADOPTED UNANIMOUSLY

The Board Members reviewed the Public Minutes of the August 13, 2015 meeting.

A MOTION was made by Mr. Scoglietti and seconded by Ms. Watson to approve the minutes from the August 13 meeting.

MOTION ADOPTED UNANIMOUSLY

LEGACY VENDOR DISCUSSION

Ms. Johnson reviewed the legal memo from the Council's outside tax counsel, Ice Miller, on the IRS requirements for legacy vendors. The memo concludes that Rev. Rul. 2007-71 also that Delaware must make a reasonably good faith effort to include non-grandfathered accounts in the information sharing protocols of the plan. These non-grandfathered accounts include all 403(b) accounts held by the school's current employees in which the vendor has received contributions between January 1, 2005 and December 31, 2008, and in which the vendor is not eligible to receive either contributions or exchanges under the school's plan as of January 1, 2009.

Ms. Johnson indicated that it was her understanding, after discussions with staff at OST that the data may not exist in a centralized location currently, as it resided with individual school districts prior to 2009. Mr. Campbell-King asked if the deferral data was in PHRST, but Mr. Kimmel indicated that with the upgrades that occurred in 2009 did not capture previous data. Ms. Johnson suggested that a letter to the non-grandfathered legacy vendors requesting them to report to OST the accounts for current state employees would likely meet the good faith requirement.

Mr. Kimmel said if participants contact him about making a hardship withdrawal from a legacy vendor he suggests that they consider moving their funds into one of the existing vendors so the distribution is tracked through the state system, the vendor issues a 1099-R and the tax is correctly withheld. Ms. Johnson said another option would be to have the legacy vendor send OST the hardship request for approval.

Mr. Simpler said as the Council moves forward to consolidate vendors he wants to understand what responsibility the Council has to current state employees who still have assets with legacy vendors. Ms Johnson stated that she did not believe further oversight would be considered a part of the good faith effort required, but resolved to research the matter and report back to the Board.

Mr. Snyder said Cammack concurs. He said post 2009 there is an administrative requirement to share information and the administrators have the responsibility to make sure the plans provisions for hardships and distributions are adhered to on behalf of participants, beneficiaries, and/or retirees. Mr. Snyder said this is generally done through an information sharing agreement.

Mr. Simpler asked Mr. Snyder to clarify the scope of the administrator's responsibility to the participants with respect to the plan offerings and fees charged by legacy vendors. Mr. Snyder said that he believed that there was DOL guidance in ERISA cases that there may be a responsibility to review and monitor investments for legacy vendors, and for the implementation of a domestic relations orders. Mr. Snyder said one of the multiple scenarios that could evolve from the RFP is to select a single record keeper that would engage in an Informational Sharing Agreement with vendors.

Mr. Snyder indicated that in some circumstances, Cammack reviews investments for clients and if a legacy investment is under-performing, Cammack will report to the committee or Council. In other cases communications have been sent to the participants informing them that they have the opportunity to transfer to the new vendor without giving specific investment advice.

Mr. Campbell-King expressed concern for losing more accounts to additional legacy vendors with the possibility of consolidation. He said there should be an aggressive outreach campaign to prevent the plan and Council from losing oversight of the accounts. Mr. Kimmel said there is now a centralized database of every participant in the plan, and that this concern should therefore be addressed.

RFP PROCESS CONSIDERATIONS-CAMACK RETIREMENT GROUP.

Mr. Simpler asked Cammack to confirm what percent of \$325 million in assets Cammack predicted would transfer over in addition to the \$36-\$37 million in group contracts under OST which can be moved over to the new vendor. Mr. Snyder predicted 10-15% but indicated that product selection, keeping fees down and watchful monitoring are motivating factors for participants, so the transfer rate could be higher than predicted.

Mr. Kimmel asked to clarify that record keepers with a licensed sales force could provide one-on-one review with participants. Mr. Snyder said the vendors could offer outreach to explain benefits, penalties, related fees and sales charges. Mr. Campbell-King said he wouldn't necessarily want his contact information being shared without his knowledge, but as a Council member he understood the benefits to the participants. He would not be opposed to sending a letter from the Office of the State Treasurer for general information on accounts.

Ms. Stewart said she wanted to make sure there was no incentive offered to the new vendor to move participants into their plan. Mr. Snyder said he agreed and stated the RFP specifically required that field staff be compensated solely on salary and a bonus driven by the goals of the plan, and not product sales. Mr. Simpler said the incentive was built in to acquire as many assets as possible since vendors are paid on a percentage of assets. He said that the selection committee would need to drill down on submitted proposals to learn exactly how bidders plan to move assets over from the legacy vendors.

Mr. Campbell-King asked that PHRST be asked to provide annual backups of the last payroll for as many years back as possible and that those be held in perpetuity. He said he wanted to make sure the Council does not lose participant plan information for which the Council maintains oversight.

BUDGET PRESENTATION-OST

Ms. Gonzalez presented a comprehensive review of five years of the administrative costs by plan, prepared at the request of Mr. Simpler, for review by the Council. She pointed out that a primary expense for the plans historically were those related to plan audits and tax/legal advice. The remainder of the expenses related to marketing and communications efforts.

Ms. Gonzalez reviewed the proposed 2016 expenses. She noted that the 2016 budget had not been presented for review by the Council under the previous administration. Ms. Gonzalez identified the approved Fidelity Revenue Credit Program (RCP) as an important source to cover plan administrative costs. She stated the RCP generated about \$450K in 2015 and was expected to accumulate about \$550K in 2016 for the period between August 2015 and May 2016. She clarified the RCP is generated by each plan and should be allocated on the same basis to cover each plan's expenses.

Ms. Gonzalez reviewed personnel and the administrative expenses which include the consultant (Cammack), the auditor (Belfint, Lyons, and Shuman), the compilation firm (Baker Tilley), and the tax counsel (Ice Miller). Ms. Gonzalez noted that numbers presented for FY 2016 included two years' worth of expenses for the compilation and audit expenses. The "other" includes travel and technology expenses. She clarified that the cost of technology, while listed as a budget item, was paid directly by OST and would not be charged to the plans.

Ms. Gonzalez reported that the 457(b) Plan had a net surplus, whereas the 401(a) and 403(b) Plans had net deficits because on a per plan basis the 401(a) and the 403(b) plans do not have enough revenue to support their expenses due to the level of assets available. She explained the RCP on a consolidated basis could cover aggregated expenses of all plans. Mr. Simpler added that historically OST has not requested sufficient funds in the budget for the Plan expenses. He clarified there are two types of funding; one appropriated by the General Assembly, and the other generated from plan assets. He reminded the Council that RCP funding can only come from the fraction of assets that Fidelity holds. OST has identified the funding gaps in the FY16 budget and has brought those to the attention of the Office of Management and Budget (OMB). She said that OST will continue to work with OMB to resolve the deficits.

Mr. Campbell-King asked why there were two years' worth of audit and compilation expenses in the 2016 budget. Ms. Gonzalez said there was a delay on the 403(b) for 2015, and Mr. McVay indicated that the process for the 457(b) and the 401(a) 2015 compilation was not started timely. Mr. Scoglietti requested a status of all audits. Ms. Gonzalez promised to provide an update at the next meeting.

Next, Ms. Gonzalez presented the FY 2017 budget. Total expenses in FY17 for all three plans were estimated at \$578K. Proposed audit and compilation expenses will only be for one year engagements, because it is anticipated that prior years' compilations should be complete. She said that the budget also included the Office of Auditor of Accounts (AOA) administrative fee rate (Maximus/OMB Overhead Rate) charged to OST for auditing support services, and a consulting engagement using the rate provided by Cammack during the RFP. Mr. Simpler said the budget item for a consultant could be less or even go to zero if the Council determines there was no need for an ongoing engagement.

Mr. Campbell-King asked about marketing and communication expenses related to participant outreach if vendors were consolidated. Ms. Gonzalez said it was their hope that such expenses would be as part of the record keeper contract.

Ms. Gonzalez indicated that the FY17 budget reflects a payment for personnel expenses out of plan assets, rather than general funding to OST. Ms. Gonzalez stated that one of the goals of the comprehensive review of historical expenses were to structure the plans to be self-sustaining.

Mr. Scoglietti asked for clarification on the deficit predicted for the 403(b) plan and the \$75K General Fund appropriation being eliminated from the 2017 request. Ms. Gonzalez stated that conversations with Cammack confirmed that plans can be designed to provide sustainable revenue streams to cover plan expenses. Ms. Gonzalez stated that upon approval of the budgets by the Council, OST, through OMB, would request the necessary legislative changes to allow personnel expenses to be paid out of the plan.

Mr. Cetrulo pointed out that none of the legacy accounts would help to pay for any administrative expenses even though staff was still working on those accounts and there was advantage to participants to move those accounts to the Plan, because the investment fees will likely be lower. Mr. Simpler agreed and indicated that OST will prioritize education and outreach to improve participation.

Mr. Campbell-King asked about long-term, unintended consequences for moving personnel expenses from the General Fund to the RCP. Ms. Gonzalez asked the same question to OMB and they confirmed that all employment conditions would remain the same and suggested the definition of a process to invoice the plans for personnel cost at the beginning of each fiscal year. Mr. Simpler said that from his perspective there was more safety in having the plans provide for their own expenses rather than relying on the state for annual funding.

Mr. Campbell-King had concerns about participant notifications as expenses were not incorporated into the budget. His primary concerns was privacy and his preference for communications to come from OST and to not new record-keeper(s). Mr. Kimmel agreed that this would be consistent with other privacy concerns.

Mr. Simpler and Council members discussed the process for paying expenses from the RCP. Ms. Gonzalez indicated that she will seek guidance from the Division of Accounting (DOA), OMB and AOA to define a comprehensive RCP process.

A MOTION was made by Mr. Scoglietti and seconded by Ms. Watson to approve the FY 16 budget as presented and authorize the use of monies accumulated in the 457(b), 401(a) and 403(b) Revenue Credit Program accounts to cover administrative expenses.

MOTION ADOPTED UNANIMOUSLY

A MOTION was made by Mr. Scoglietti and seconded by Ms. Stewart to approve the FY 17 budget as presented and authorize the use of monies accumulated in the 457(b), 401(a) and 403(b) RCP accounts to cover personnel and administrative expenses with the understanding that a request to amend the Delaware Code should be submitted to make the statutory provisions of the Deferred Compensation Program consistent with those applicable to the Defined Benefit Plan, the 529 College Investment Plan and the 529(a) Achieving a Better Life Experience (ABLE) plan.

MOTION ADOPTED UNANIMOUSLY

OLD BUSINESS

Mr. Scoglietti asked for updates on the RFP process. Ms. Gonzalez said OST worked with Cammack to submit answers to the questions received by the potential bidders. The deadline for receipt of proposals is October 7, 2015 at 4:00 p.m.

Mr. Campbell-King asked about tentative dates for the selection committee. Ms. Gonzalez was appointed to coordinate the upcoming meetings and provide the members with the timeline.

PUBLIC COMMENTS

No Public present for comment.

ADJOURNMENT

Mr. Simpler adjourned the meeting at 2:52 PM

Respectfully submitted,

The Honorable Ken Simpler, State Treasurer
Co-Chair for the Deferred Compensation Council

The Honorable Thomas J. Cook, Secretary of Finance
Co-Chair for the Deferred Compensation Council